

Attorneys for Clay CAD

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
WICHITA FALLS DIVISION**

Case No. 07-70207-HDH-13

## Chapter 13

Pre-Hearing: Dec. 15, 2010 at 8:30 a.m.  
Final Hearing: Dec. 15, 2010 at 10:00 a.m.

## **CLAY CAD'S OBJECTION TO DEBTORS' MODIFICATION OF PLAN AFTER CONFIRMATION**

TO THE HONORABLE COURT:

Now comes Clay CAD and files this Objection to Debtors' Modification of Plan after Confirmation, dated November 9, 2010, and in support thereof would respectfully show the Court as follows:

1. Clay CAD filed a claim in the aggregate amount of \$3,722.83 for 2006 and 2007 pre-petition ad valorem property taxes due on the Debtors' real and personal property located at 700 Tippecanoe Trail, Clay County, Texas. This claim is secured by liens on the property pursuant to sections 32.01 and 32.05 of the Texas Property Tax Code.

2. This claim was provided for in the Debtors' confirmed Plan.

3. The Debtors have failed to pay the post-petition 2010 taxes to Clay CAD, which taxes are now due. By Debtors' Modification, the Debtors are attempting to include this post-petition debt in the Confirmed Plan.

4. Pursuant to 11 U.S.C. §1305(a)(1), a “proof of claim may be filed by any entity that holds a claim against the debtor for taxes that become payable to a governmental unit while the case is pending.” This section permits a governmental unit to file a proof of claim for post-

petition taxes, but does not authorize the debtor to file such a claim on behalf of the taxing authority.<sup>1</sup> Instead, the Bankruptcy Code allows the governmental unit to either participate in the plan to receive distributions for the post-petition taxes or to remain outside the plan and recover the taxes outside of the bankruptcy case. This decision rests with the taxing authority and the taxing authority may not be forced to include its post-petition tax debt in the debtor's Chapter 13 plan. In this instance, Clay CAD has not filed a proof of claim for the post-petition taxes. Rather, Clay CAD chooses to collect the post-petition taxes outside of this case and objects to the Debtors' attempt to include the post-petition taxes in their Chapter 13 Plan.

WHEREFORE, based on the foregoing, Clay CAD respectfully requests the Court enter an Order denying the Debtors' Modification of the Plan after Confirmation to the extent the modification purports to include the post-petition taxes owed Clay CAD.

Dated: December 1, 2010.

Respectfully submitted,

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By: /s/ Sherrel K. Knighton  
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<sup>1</sup> *In re Hector Flores*, 270 B.R. 203, 208-09 (Bankr. S.D. Tex. 2001).

### **Certificate of Conference**

I hereby certify that on November 17, 2010, I spoke with Michele Graham, legal assistant to Monte J. White, counsel for the Debtors, in an attempt to resolve Clay CAD's objection to the proposed modification of the Debtors' Plan. A resolution could not be reached.

/s/ Sherrel K. Knighton  
Sherrel K. Knighton

### **Certificate of Service**

I hereby certify that on this 1st day of December 2010, I caused a true and exact copy of the foregoing to be served upon Monte J. White, counsel for Debtors, the Debtors, and the Chapter 13 Trustee, electronically or by first class U.S. mail.

/s/ Sherrel K. Knighton  
Sherrel K. Knighton

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